

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Government Code and the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

**SUBJECT TO COURT
ORDERED CHANGES**

NO BOLD TYPE

(Language added is designated in *italicized type* and language deleted is designated in ~~strikeout type~~)

¶ ^{TION} SEC 1. ~~SHORT TITLE.~~

¶ This Act shall be known and may be cited as the Death Penalty Reform and Savings Act of 2016.

¶ SEC. 2. ~~FINDINGS AND DECLARATIONS.~~

- ¶ 1. California's death penalty system is ineffective because of waste, delays, and inefficiencies. Fixing it will save California taxpayers millions of dollars every year. These wasted taxpayer dollars would be better used for crime prevention, education, and services for the elderly and disabled.
- ¶ 2. Murder victims and their families are entitled to justice and due process. Death row killers have murdered over 1000 victims, including 229 children and 43 police officers; 235 victims were raped and 90 victims were tortured.
- ¶ 3. Families of murder victims should not have to wait decades for justice. These delays further victimize the families who are waiting for justice. For example, serial killer Robert Rhoades, who kidnapped, raped, tortured, and murdered 8-year-old Michael Lyons and also raped and murdered Bay Area high school student Julie Connell, has been sitting on death row for over 16 years. Hundreds of killers have sat on death row for over 20 years.
- ¶ 4. In 2012, the Legislative Analyst's Office found that eliminating special housing for death row killers will save tens of millions of dollars every year. These savings could be invested in our schools, law enforcement, and communities to keep us safer.
- ¶ 5. Death row killers should be required to work in prison and pay restitution to their victims' families consistent with the Victims' Bill of Rights (Marsy's law). Refusal to work and pay restitution should result in loss of special privileges.

- ¶ 6. Reforming the existing inefficient appeals process for death penalty cases will ensure fairness for both defendants and victims. Right now, capital defendants wait five years or more for appointment of their appellate lawyer.* By providing prompt appointment of attorneys, the defendants' claims will be heard sooner.
- ¶ 7. A defendant's claim of actual innocence should not be limited, but frivolous and unnecessary claims should be restricted. These tactics have wasted taxpayer dollars and delayed justice for decades.
- ¶ 8. The state agency that is supposed to expedite secondary review of death penalty cases is operating without any effective oversight, causing long-term delays and wasting taxpayer dollars. California Supreme Court oversight of this state agency will ensure accountability.
- ¶ 9. Bureaucratic regulations have needlessly delayed enforcement of death penalty verdicts. Eliminating wasteful spending on repetitive challenges to these regulations will result in the fair and effective implementation of justice.
- ¶ 10. The California Constitution gives crime victims the right to timely justice. A capital case can be fully and fairly reviewed by both the state and federal courts within ten years. By adopting state rules and procedures, victims will receive timely justice and taxpayers will save hundreds of millions of dollars.
- ¶ 11. California's Death Row includes serial killers, cop killers, child killers, mass murderers, and hate crime killers. The death penalty system is broken, but it can and should be fixed. This initiative will ensure justice for both victims and defendants, and will save hundreds of millions of taxpayer dollars.

SEC. 3. Section 190.6 of the Penal Code is amended to read:

§ 190.6. (a) The Legislature finds that the sentence in all capital cases should be imposed expeditiously.

(b) Therefore, in all cases in which a sentence of death has been imposed on or after January 1, 1997, the opening appellate brief in the appeal to the State Supreme Court shall be filed no later than seven months after the certification of the record for completeness under subdivision (d) of Section 190.8 or receipt by the appellant's counsel of the completed record, whichever is later, except for good cause. However, in those cases where the trial transcript exceeds 10,000 pages, the briefing shall be completed within the time limits and pursuant to the procedures set by the rules of court adopted by the Judicial Council.

Type
Strike
ital
as indicate

(c) In all cases in which a sentence of death has been imposed on or after January 1, 1997, it is the Legislature's goal that the appeal be decided and an opinion reaching the merits be filed within 210 days of the completion of the briefing. However, where the appeal and a petition for writ of habeas corpus is heard at the same time, the petition should be decided and an opinion reaching the merits should be filed within 210 days of the completion of the briefing for the petition.

(d) The right of victims of crime to a prompt and final conclusion, as provided in subdivision (b)(9) of section 28, of the Constitution, includes the right to have judgments of death carried out within a reasonable time. Within 18 months of the effective date of this initiative, the Judicial Council shall adopt initial rules and standards of administration designed to expedite the processing of capital appeals and state habeas corpus review. Within five years of the adoption of the initial rules or the entry of judgment, whichever is later, the state courts shall complete the state appeal and the initial state habeas corpus review in capital cases. The Judicial Council shall continuously monitor the timeliness of review of capital cases and shall amend the rules and standards as necessary to complete the state appeal and initial state habeas corpus proceedings within the five-year period provided in this subsection.

California

subdivision

~~(d)(e) The failure of the parties or the Supreme Court to meet or comply with the time limit provided by this section shall not be a ground for granting relief from a judgment of conviction or sentence of death of a court to comply with the time limit in subdivision (b) of this section shall not affect the validity of the~~

paragraph (9) of subdivision (b) of Section 28 of Article I

SUBJECT TO COURT
ORDERED CHANGES

Paragraph (1) of Subdivision (c) of Section 28 of Article I

judgment or require dismissal of an appeal or habeas corpus petition. If a court fails to comply without extraordinary and compelling reasons justifying the delay, either party or any victim of the offense may seek relief by petition for writ of mandate. The court in which the petition is filed shall act on it within 60 days of filing. Subdivision (c)(1) of section 28 of the Constitution, regarding standing to enforce victims' rights, applies to this subdivision and subdivision (d) of this section.

California

Roman

¶ SEC. 4. Section 1227 of the Penal Code is amended to read:

¶ (227.)

^{ital} (a) If for any reason other than the pendency of an appeal pursuant to subdivision (b) of Section 1239 of this code a judgment of death has not been executed, and it remains in force, the court in which the conviction was had shall, on application of the district attorney, or may upon its own motion, make and cause to be entered an order ~~appointing a day upon specifying a period of 10 days during~~ ^{which} the judgment shall be executed, ~~which must not be less than 30 days nor more than 60 days from the time of making such order; and immediately thereafter.~~ ^{The} 10-day period shall begin no less than 30 days after the order is entered and shall end no more than 60 days after the order is entered. Immediately after the order is entered, a certified copy of ~~such~~ the order, attested by the clerk, under the seal of the court, shall, for the purpose of execution, be transmitted by registered mail to the warden of the state prison having the custody of the defendant; provided, that if the defendant be at large, a warrant for his apprehension may be issued, and upon being apprehended, he shall be brought before the court, whereupon the court shall make an order directing the warden of the state prison to whom the sheriff is instructed to deliver the defendant to execute the judgment ~~at a specified time within a period of 10 days, which shall not be begin less than 30 days nor end more than 60 days from the time of making such order.~~

TYPE
STRIKE
ital as
indicated

^{ital} (b) From an order fixing the time for and directing the execution of such judgment as herein provided, there shall be no appeal.

¶ SEC. 5. Section 1239.1 is added to the Penal Code to read:

¶ 1239.1. (a) It is the duty of the Supreme Court in a capital case to expedite the review of the case. The court shall appoint counsel for an indigent appellant as soon as possible. The court shall only grant extensions of time for briefing for compelling or extraordinary reasons.

ital

(b) When necessary to remove a substantial backlog in appointment of counsel for capital cases, the Supreme Court shall require attorneys who are qualified for appointment to the most serious non-capital appeals and who meet the qualifications for capital appeals to accept appointment in capital cases as a condition for remaining on the court's appointment list. A substantial backlog exists for this purpose when the time from entry of judgment in the trial court to appointment of counsel for appeal exceeds six months over a period of twelve consecutive months.

ital

6

12

SEC. 6. Section 1509 is added to the Penal Code to read:

§ 1509. (a) This section applies to any petition for writ of habeas corpus filed by a person in custody pursuant to a judgment of death. A writ of habeas corpus pursuant to this section is the exclusive procedure for collateral attack on a judgment of death. A petition filed in any court other than the court which imposed the sentence should be promptly transferred to that court unless good cause is shown for the petition to be heard by another court. A petition filed in or transferred to the court which imposed the sentence shall be assigned to the original trial judge unless that judge is unavailable or there is other good cause to assign the case to a different judge.

(b) After the entry of a judgment of death in the trial court, that court shall offer counsel to the prisoner as provided in section 68662 of the Government Code.

(c) Except as provided in subdivisions (d) and (g), the initial petition must be filed within one year of the order entered under section 68662 of the Government Code.

ital

(d) An initial petition which is untimely under subdivision (c) or a successive petition whenever filed shall be dismissed unless the court finds, by the preponderance of all available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence. A stay of execution shall not be granted for the purpose of considering a successive or untimely petition unless the court finds that the petitioner has a substantial claim of actual innocence or ineligibility.

“ Ineligible for the sentence of death means that circumstances exist placing that sentence outside the range of the sentencer's discretion. Claims of ineligibility include a claim that none of the special circumstances in subdivision (a) of section 190.2 is true, a claim that the defendant was under the age of 18 at the time of the crime, or a claim that the defendant has an intellectual disability as defined in

section 1376. A claim relating to the sentencing decision under section 190.3 is not a claim of actual innocence or ineligibility for the purpose of this section.

(e) A petitioner claiming innocence or ineligibility under subdivision (d) of this section shall disclose all material information relating to guilt or eligibility in the possession of the petitioner or present or former counsel for petitioner. If the petitioner willfully fails to make the disclosure required by this subdivision and authorize disclosure by counsel, the petition may be dismissed.

(f) Proceedings under this section shall be conducted as expeditiously as possible, consistent with a fair adjudication. The superior court shall resolve the initial petition within one year of filing unless the court finds that a delay is necessary to resolve a substantial claim of actual innocence, but in no instance shall the court take longer than two years to resolve the petition. On decision of an initial petition, the court shall issue a statement of decision explaining the factual and legal basis for its decision.

(g) If a habeas corpus petition is pending on the effective date of this section, the court may transfer the petition to the court which imposed the sentence. In a case where a judgment of death was imposed prior to the effective date of this section but no habeas corpus petition has been filed prior to the effective date of this section, a petition that would otherwise be barred by subdivision (c) of this section may be filed within one year of the effective date or within the time allowed under prior law, whichever is earlier.

of this
section

SEC. 7. Section 1509.1 is added to the Penal Code to read:

1509.1. (a) Either party may appeal the decision of a superior court on an initial petition under section 1509 to the court of appeal. An appeal shall be taken by filing a notice of appeal in the superior court within 30 days of the court's decision granting or denying the habeas petition. A successive petition shall not be used as a means of reviewing a denial of habeas relief.

(b) The issues considered on an appeal under subdivision (a) of this section shall be limited to the claims raised in the superior court, except that the court of appeal may also consider a claim of ineffective assistance of trial counsel if the failure of habeas counsel to present that claim to the superior court constituted ineffective assistance. The court of appeal may, if additional findings of fact are required, make a limited remand to the superior court to consider the claim.

(c) The people may appeal the decision of the superior court granting relief on a successive petition. The petitioner may appeal the decision of the superior court denying relief on a successive petition only if the superior court or the court of appeal grants a certificate of appealability. A certificate of appealability may issue under this subdivision only if the petitioner has shown both a substantial claim for relief, which shall be indicated in the certificate, and a substantial claim that the requirements of subdivision (d) of section 1509 have been met. An appeal under this subdivision shall be taken by filing a notice of appeal in the superior court within 30 days of the court's decision. The superior court shall grant or deny a certificate of appealability concurrently with a decision denying relief on the petition. The court of appeal shall grant or deny a request for a certificate of appealability within 10 days of an application for a certificate. The jurisdiction of the court of appeal is limited to the claims identified in the certificate and any additional claims added by the court of appeal within 60 days of the notice of appeal. An appeal under this subdivision shall have priority over all other matters and be decided as expeditiously as possible. *ital*

¶ SEC. 8. Section 2700.1 of the Penal Code is added to read:

¶ 2700.1. Section 2700 applies to inmates sentenced to death except as otherwise provided in this section.

¶ Every person found guilty of murder, sentenced to death, and held by the Department of Corrections and Rehabilitation pursuant to sections 3600 to 3602 shall be required to work as many hours of faithful labor each day he or she is so held as shall be prescribed the rules and regulations of the Department.

¶ Physical education and physical fitness programs shall not qualify as work for purposes of this section. The Department of Corrections and Rehabilitation may revoke the privileges of any condemned inmate who refuses to work as required by this section. *ital*

percent ¶ In any case where the condemned inmate owes a restitution fine or restitution order, the Secretary of the Department of Corrections and Rehabilitation shall deduct 70% or the balance owing, whichever is less, from the condemned inmate's wages and trust account deposits, regardless of the source of the income, and shall transfer those funds to the California Victim Compensation and Government Claims Board according to the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to sections 2085.5 and 2717.8 of the Penal Code.

except S/O

SEC. 9. Section 3600 of the Penal Code is amended to read:

3600. (a) Every male person, upon whom has been imposed the judgment of death, shall be delivered to the warden of the California state prison designated by the ~~department~~ Department for the execution of the death penalty, ~~there to be kept until the execution of the judgment, as provided in subdivision (b).~~ *The inmate shall be kept in a California prison until execution of the judgment. The Department may transfer the inmate to another prison which it determines to provide a level of security sufficient for that inmate. The inmate shall be returned to the prison designated for execution of the death penalty after an execution date has been set.*

(b) Notwithstanding any other provision of law:

(1) A condemned inmate who, while in prison, commits any of the following offenses, or who, as a member of a gang or disruptive group, orders others to commit any of these offenses, may, following disciplinary sanctions and classification actions at San Quentin State Prison, pursuant to regulations established by the Department of Corrections, be housed in secure condemned housing designated by the Director of Corrections, at the California State Prison, Sacramento:

- (A) Homicide.
- (B) Assault with a weapon or with physical force capable of causing serious or mortal injury.
- (C) Escape with force or attempted escape with force.
- (D) Repeated serious rules violations that substantially threaten safety or security.

(2) The condemned housing program at California State Prison, Sacramento, shall be fully operational prior to the transfer of any condemned inmate.

(3) Specialized training protocols for supervising condemned inmates shall be provided to those line staff and supervisors at the California State Prison, Sacramento, who supervise condemned inmates on a regular basis.

(4) An inmate whose medical or mental health needs are so critical as to endanger the inmate or others may, pursuant to regulations established by the Department of Corrections, be housed at the California Medical Facility or other appropriate institution for medical or mental health treatment. The inmate shall be returned to the institution from which the inmate was transferred when the condition has been adequately treated or is in remission.

(c) When housed pursuant to subdivision (b) the following shall apply:

(1) Those local procedures relating to privileges and classification procedures provided to Grade B condemned inmates at San Quentin State Prison shall be similarly instituted at California State Prison, Sacramento, for condemned inmates housed pursuant to paragraph (1) of subdivision (b) of Section 3600. Those classification procedures shall include the right to the review of a classification no less than every 90 days and the opportunity to petition for a return to San Quentin State Prison.

TYPE STRIKE
italics
indicated

S/o

(2) Similar attorney-client access procedures that are afforded to condemned inmates housed at San Quentin State Prison shall be afforded to condemned inmates housed in secure condemned housing designated by the Director of Corrections, at the California State Prison, Sacramento. Attorney-client access for condemned inmates housed at an institution for medical or mental health treatment shall be commensurate with the institution's visiting procedures and appropriate treatment protocols.

(3) A condemned inmate housed in secure condemned housing pursuant to subdivision (b) shall be returned to San Quentin State Prison at least 60 days prior to his scheduled date of execution.

(4) No more than 15 condemned inmates may be rehoused pursuant to paragraph (1) of subdivision (b).

(d) Prior to any relocation of condemned row from San Quentin State Prison, whether proposed through legislation or any other means, all maximum security Level IV, 180-degree housing unit facilities with an electrified perimeter shall be evaluated by the Department of Corrections for suitability for the secure housing and execution of condemned inmates.

¶ SEC. 10. Section 3604 of the Penal Code is amended to read:

rowan 91 (3604) (a) The punishment of death shall be inflicted by the administration of a lethal gas or by an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death, by standards established under the direction of the Department of Corrections and Rehabilitation. ital

TYPE Strike
& ital as
indicated

ital
and Rehabilitation

(b) Persons sentenced to death prior to or after the operative date of this subdivision shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection. This choice shall be made in writing and shall be submitted to the warden pursuant to regulations established by the Department of Corrections. If a person under sentence of death does not choose either lethal gas or lethal injection within 10 days after the warden's service upon the inmate of an execution warrant issued following the operative date of this subdivision, the penalty of death shall be imposed by lethal injection.

(c) Where the person sentenced to death is not executed on the date set for execution and a new execution date is subsequently set, the inmate again shall have the opportunity to elect to have punishment imposed by lethal gas or lethal injection, according to the procedures set forth in subdivision (b).

(d) Notwithstanding subdivision (b), if either manner of execution described in subdivision (a) is held invalid, the punishment of death shall be imposed by the alternative means specified in subdivision (a).

(e) *The Department of Corrections and Rehabilitation, or any successor agency with the duty to execute judgments of death, shall maintain at all times the ability to execute such judgments.*

¶ SEC. 11. Section 3604.1 is added to the Penal Code to read:

¶ 3604.1. (a) *The Administrative Procedure Act shall not apply to standards, procedures, or regulations promulgated pursuant to section 3604. The Department shall make the standards adopted under subdivision (a) of that section available to the public and to inmates sentenced to death. The Department shall promptly notify the Attorney General, the State Public Defender, and counsel for any inmate for whom an execution date has been set or for whom a motion to set an execution date is pending of any adoption or amendment of the standards. Noncompliance with this subdivision is not a ground for stay of an execution or an injunction against carrying out an execution unless the noncompliance has actually prejudiced the inmate's ability to challenge the standard, and in that event the stay shall be limited to a maximum of ten days.* 10

(b) *Notwithstanding subdivision (a) of section 3604, an execution by lethal injection may be carried out by means of an injection other than intravenous if the warden determines that the condition of the inmate makes intravenous injection impractical.*

17a1 (c) The court which rendered the judgment of death has exclusive jurisdiction to hear any claim by the condemned inmate that the method of execution is unconstitutional or otherwise invalid. Such a claim shall be dismissed if the court finds its presentation was delayed without good cause. If the method is found invalid, the court shall order the use of a valid method of execution. If the use of a method of execution is enjoined by a federal court, the Department of Corrections and Rehabilitation shall adopt, within 90 days, a method that conforms to federal requirements as found by that court. If the Department fails to perform any duty needed to enable it to execute the judgment, the court which rendered the judgment of death shall order it to perform that duty on its own motion, on motion of the District Attorney or Attorney General, or on motion of any victim of the crime as defined in ~~article I, section 28~~ subdivision (c) of the Constitution. California

(e) of Section 28 of Article I

17a1 SEC. 12. Section 3604.3 is added to the Penal Code to read:

17a1 3604.3. (a) A physician may attend an execution for the purpose of pronouncing death and may provide advice to the Department for the purpose of developing an execution protocol to minimize the risk of pain to the inmate.

(b) The purchase of drugs, medical supplies or medical equipment necessary to carry out an execution shall not be subject to the provisions of Chapter 9 (commencing with section 4000) of Division 2 of the Business and Professions Code, and any pharmacist, or supplier, compounder, or manufacturer of pharmaceuticals is authorized to dispense drugs and supplies to the Secretary or the Secretary's designee, without prescription, for carrying out the provisions of this chapter. 17a1

17a1 (c) No licensing board, Department, commission, or accreditation agency which oversees or regulates the practice of health care or certifies or licenses health care professionals may deny or revoke a license or certification, censure, reprimand, suspend, or take any other disciplinary action against any licensed health care professional for any action authorized by this section.

17a1 SEC. 13. Section 68660.5 is added to the Government Code to read:

17a1 68660.5. The purposes of this chapter are to qualify the State of California for the handling of federal habeas corpus petitions under chapter 154 of title 28 of the United States Code, to expedite the completion of state habeas corpus proceedings

in capital cases, and to provide quality representation in state habeas corpus for inmates sentenced to death. This chapter shall be construed and administered consistently with those purposes.) ital

¶ SEC. 14. Section 68661 of the Government Code is amended to read:

¶ 68661. There is hereby created in the judicial branch of state government the California Habeas Corpus Resource Center, which shall have all of the following general powers and duties:

(a) To employ up to 34 attorneys who may be appointed ~~by the Supreme Court pursuant to section 68662~~ to represent any person convicted and sentenced to death in this state who is without counsel, and who is determined by a court of competent jurisdiction to be indigent, for the purpose of instituting and prosecuting ~~postconviction actions~~ *habeas corpus petitions* in the state and federal courts, challenging the legality of the judgment or sentence imposed against that person, *subject to the limitations in section 68661.1*, and preparing petitions for executive clemency. *Any such* appointment may be concurrent with the appointment of the State Public Defender or other counsel for purposes of direct appeal under Section 11 of Article VI of the California Constitution.

Type strike
ital as
indicated

(b) To seek reimbursement for representation and expenses pursuant to Section 3006A of Title 18 of the United States Code when providing representation to indigent persons in the federal courts and process those payments via the Federal Trust Fund.

(c) To work with the ~~Supreme Court~~ courts in recruiting members of the private bar to accept death penalty habeas case appointments.

(d) To ~~establish and periodically update~~ *recommend attorneys to the Supreme Court for inclusion in a roster of attorneys qualified as counsel in postconviction habeas corpus proceedings in capital cases, provided that the final determination of whether to include an attorney in the roster shall be made by the Supreme Court and not delegated to the center.*

(e) To establish and periodically update a roster of experienced investigators and experts who are qualified to assist counsel in ~~postconviction habeas corpus~~ proceedings in capital cases.

(f) To employ investigators and experts as staff to provide services to

appointed counsel upon request of counsel, provided that when the provision of those services is to private counsel ~~under appointment by the Supreme Court~~, those services shall be pursuant to contract between appointed counsel and the center.

(g) To provide legal or other advice ~~or, to the extent not otherwise available, any other assistance~~ to appointed counsel in ~~postconviction~~ *habeas corpus* proceedings as is appropriate when not prohibited by law.

(h) To develop a brief bank of pleadings and related materials on significant, recurring issues that arise in ~~postconviction~~ *habeas corpus* proceedings in capital cases and to make those briefs available to appointed counsel.

(i) To evaluate cases and recommend assignment by the court of appropriate attorneys.

(j) To provide assistance and case progress monitoring as needed.

(k) To timely review case billings and recommend compensation of members of the private bar to the court.

ital
Analyst's Office

⑪ The center shall report annually to *the people*, the Legislature, the Governor, and the Supreme Court on the status of the appointment of counsel for indigent persons in ~~postconviction~~ *habeas corpus* capital cases, and on the operations of the center. ~~On or before January 1, 2000, the office of the Legislative Analyst shall evaluate the available reports.~~ *The report shall list all cases in which the center is providing representation. For each case that has been pending more than one year in any court, the report shall state the reason for the delay and the actions the center is taking to bring the case to completion.*

④ SEC. 15. Section 68661.1 is added to the Government Code to read:

④ 68661.1. (a) *The center may represent a person sentenced to death on a federal habeas corpus petition if and only if (1) the center was appointed to represent that person on state habeas corpus, (2) the center is appointed for that purpose by the federal court, and (3) the executive director determines that compensation from the federal court will fully cover the cost of representation. Neither the center nor any other person or entity receiving state funds shall spend state funds to attack in federal court any judgment of a California court in a capital case, other than review in the Supreme Court pursuant to* 28 U.S.C. §1257.

ital

(b) *The center is not authorized to represent any person in any action other than habeas corpus which constitutes a collateral attack on the judgment or seeks to delay or prevent its execution. The center shall not engage in any other litigation or expend funds in any form of advocacy other than as expressly authorized by this section or section 68661.*

¶ SEC. 16. Section 68662 of the Government Code is amended to read:

¶ 68662. The ~~Supreme Court~~ *superior court* ~~which imposed the sentence~~ shall offer to appoint counsel to represent all ~~state prisoners~~ *prisoner* subject to a capital sentence for purposes of state postconviction proceedings, and shall enter an order containing one of the following:

(a) The appointment of one or more counsel to represent the prisoner in ~~postconviction~~ *state proceedings pursuant to section 1509 of the Penal Code* upon a finding that the person is indigent and has accepted the offer to appoint counsel or is unable to competently decide whether to accept or reject that offer.

(b) A finding, after a hearing if necessary, that the prisoner rejected the offer to appoint counsel and made that decision with full understanding of the legal consequences of the decision.

(c) The denial to appoint counsel upon a finding that the person is not indigent.

¶ SEC. 17. Section 68664 of the Government Code is amended to read:

¶ 68664. (a) The center shall be managed by an executive director who shall be responsible for the day-to-day operations of the center.

(b) The executive director shall be chosen by a ~~five member board of directors and confirmed by the Senate. Each Appellate Project shall appoint one board member, all of whom shall be attorneys. However, no attorney who is employed as a judge, prosecutor, or in a law enforcement capacity shall be eligible to serve on the board~~ *the Supreme Court*. The executive director shall serve at the will of the ~~board~~ *Supreme Court*.

(c) ~~Each member of the board shall be appointed to serve a four year term, and vacancies shall be filled in the same manner as the original appointment. Members of~~

~~the board shall receive no compensation, but shall be reimbursed for all reasonable and necessary expenses incidental to their duties. The first members of the board shall be appointed no later than February 1, 1998. The executive director shall~~ insure *ensure* ~~that all matters in which the center provides representation are completed as expeditiously as possible consistent with effective representation.~~

(d) The executive director shall meet the appointment qualifications of the State Public Defender as specified in Section 15400.

remains (e) The executive director shall receive the salary that shall be specified for ~~the executive director~~ *State Public Defender* in Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2. *All other attorneys employed by the center shall be compensated at the same level as comparable positions in the Office of the State Public Defender.*

¶ SEC. 18. Section 68665 of the Government Code is amended to read:

¶ 68665. (a) The Judicial Council and the Supreme Court shall adopt, by rule of court, binding and mandatory competency standards for the appointment of counsel in death penalty direct appeals and habeas corpus proceedings, *and they shall reevaluate the standards as needed to ensure that they meet the criteria in subdivision (b) of this section.*

*TYPE STRIKE
and ital
as indicated*

(b) In establishing and reevaluating the standards, the Judicial Council and the Supreme Court shall consider the qualifications needed to achieve competent representation, the need to avoid unduly restricting the available pool of attorneys so as to provide timely appointment, and the standards needed to qualify for chapter 154 of title 28 of the United States Code. Experience requirements shall not be limited to defense experience.

SEC. 19. ~~EFFECTIVE DATE~~. Except as more specifically provided in this act, all sections of this act take effect immediately upon enactment and apply to all proceedings conducted on or after the effective date.

SEC. 20. ~~AMENDMENTS~~. The statutory provisions of this act shall not be amended by the Legislature, except by a statute passed in each house by roll call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the

voters.

SEC. 21. SEVERABILITY/CONFLICTING MEASURES/STANDING.

If any provision of this ~~Act~~, or any part of any provision, or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this ~~Act~~ are severable.

This measure is intended to be comprehensive. It is the intent of the ~~People~~ that in the event this measure or measures relating to the subject of capital punishment shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

The ~~People~~ of the State of California declare that the proponent of this ~~Act~~ has a direct and personal stake in defending this ~~Act~~ and grant formal authority to the proponent to defend this ~~Act~~ in any legal proceeding, either by intervening in such legal proceeding, or by defending the ~~Act~~ on behalf of the ~~People~~ and the ~~State~~ in the event that the ~~State~~ declines to defend the ~~Act~~ or declines to appeal an adverse judgment against the ~~Act~~. In the event that the proponent is defending this ~~Act~~ in a legal proceeding because the ~~State~~ has declined to defend it or to appeal an adverse judgment against it, the proponent shall: act as an agent of the people and the ~~State~~; be subject to all ethical, legal, and fiduciary duties applicable to such parties in such legal proceedings; take and be subject to the ~~Oath of Office~~ prescribed by Article XX, ~~section 3~~ of the California Constitution for the limited purpose of acting on behalf of the ~~People~~ and the ~~State~~ in such legal proceeding; and be entitled to recover reasonable legal fees and related costs from the ~~State~~.

Section 3 of